IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 904 of 1999

CC.384/1999 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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APPELLANT/COMPLAINANT:

C.V. JAYAKRISHNAN, REPRESENTED BY POWER OF ATTORNEY HOLDER VIJAYA RAGHAVAN, PONMERI AMSOM, PARAMBIL DESOM,\ VADAKARA.

BY ADV. SRI.PARTHASARATHY

RESPONDENT/ACCUSED:

N.V. KRISHNAN, VINISH NIVAS,
P.O.UDUMA, KASARAGOD.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No. 904 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against the order of acquittal under section 256 (1) of the Code of Criminal Procedure for absence of the complainant. The complaint was filed under section 138 of the Negotiable Instruments Act alleging that cheque issued by the respondent was dishonoured for insufficiency of funds. The case was posted for return of summons. Even though notice was not served on the accused, the complaint was dismissed for absence of the complainant.

2. It is the case of the complainant that even if he was represented, since no written application was filed for exempting the presence of the complainant, the accused was acquitted. Even though Magistrate has got power to acquit an accused for absence of the complainant, it should not be done mechanically. Since accused was not served with notice, presence of the complainant was not absolutely necessary.

In the above circumstances, the impugned order is set aside and the matter is remanded. Fresh steps to be taken against the accused. Complainant should be present

before the trial court on 29.3.2007. The appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A.No.904 of 1999

Judgment

14-2-2007